BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for Redetermination of	)	DOCKET NO. 19508
[Redacted],	)	DECISION
Taxpayer.	)	

On May 3, 2006, the Sales and Use Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination for the period of March 1, 2004, through March 31, 2005, to [Redacted] (taxpayer), asserting use tax, penalty, and interest totaling $9,197.

In a letter dated June 29, 2006, the taxpayer protested the Notice of Deficiency Determination and requested an informal hearing, which the Tax Commission held on August 31, 2006.

The Commission, having reviewed the file, hereby issues its Decision modifying the deficiency in part and upholding the deficiency in part.

Background

The taxpayer is an [Redacted] firm, and it regularly files Idaho sales and use tax returns. The issues for this Decision concern the taxpayer's use of commercial trucks in interstate travel. Owners and operators of commercial-sized vehicles with interstate travel requirements can choose to register those vehicles in the International Registration Plan (IRP). The IRP is an interstate agreement to apportion vehicle registration fees paid by motor carriers and was developed by the American Association of Motor Vehicle Administrators (49 U.S.C § 31701 Definitions). IRP registration facilitates the freedom of interstate travel by eliminating state-by-state registration or the need for a carrier to obtain trip permits every time a registered vehicle leaves its resident-state's borders.

The Idaho Sales Tax Act imposes a tax on retail sales, defined in pertinent part as "any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration. . . ." (Idaho Code § 63-3612(1)). Thus, it is undisputed that the purchase of a vehicle is a retail sale subject to tax in the absence of an applicable exemption. Like all other states with a sales tax, Idaho has a complementary use tax with an identical rate, and Idaho may impose this tax on the purchaser when retailers fail to collect the tax; the retailer is not required to collect the tax; or, circumstances call for a tax subsequent to the purchase. It is the latter which concerns us here.

In Idaho there is an exemption from tax on the sale, purchase, and use of vehicles registered under the IRP, provided certain additional requirements are met, as specified in the relevant part of the following Idaho statute:

> Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan . . . and the sale or lease of trailers which are part of a fleet of vehicles registered under such proportional or pro rata registration system when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any annual registration period under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent(10%) of the miles operated by the fleet accrued outside of Idaho in any annual registration period under the international registration plan (Idaho Code § 63-3622R(c)).

As noted in the code section cited above, an IRP-registered vehicle meeting a specific weight requirement and contributing to a threshold of aggregate out-of-state fleet mileage during each registration period can continue to enjoy what is informally referred to as "the IRP exemption." Failure to continually be "substantially used in interstate commerce" in each annual registration

period constitutes "use in Idaho" for each truck in the fleet. "Use in Idaho" requires the owner to pay use tax to the state.

The IRP contemplated that some motor carriers would have more than one fleet, requiring each fleet to have sequential numbers beginning with 001 and to have unique jurisdictional coverage (Idaho Instructions for Completing International Registration Plan (IRP) Schedule A, Section 1, Application Information, # 2 and Idaho Transportation Department IRP Requirements, form 3551 (Rev. 1-06), para. 4). The motor carrier has complete control over the division of its trucks among one or more fleets and chooses the jurisdictions it will drive within, between, and among.

Thus, a particular carrier may have a fleet that travels in Idaho and Oregon; a second fleet that travels in [Redacted]; and a third fleet that travels in [Redacted],[Redacted], and [Redacted]. The aggregate of registration fees for the states within which each fleet's vehicles travel serves as the amount apportioned by mileage between or among those states. (International Registration Plan © with Official Commentary, Adopted September 1973, rev. July 1, 2006. Section 300, Determination of Fees).

It makes no sense and is impermissible to have a fleet apportion some of its registration fee to [Redacted] State, for example, when no vehicle in that fleet travels in that state. Under the plan's requirements, each vehicle in a fleet must accrue actual distance in two or more IRP jurisdictions during each registration period (Idaho Transportation Department IRP Requirements, form 3551 (Rev. 1-06), para. 4).

Audit Findings

The taxpayer has several fleets in the IRP. According to a Commission auditor, vehicles in Fleet [Redacted] failed in the aggregate to meet the 10 percent out-of-state mileage requirement and thus the use of the vehicles (there are 14) no longer qualified for the tax exemption granted by Idaho

Code § 63-3622R(c). The Commission asserted tax based on the fair market value of each vehicle in the non-conforming fleet as of the beginning of the annual registration period following the one for which the fleet failed to qualify.

Summary of Taxpayer's Protest

In the June 29, 2006, protest letter, the taxpayer objected to "the arbitrary application of Idaho Code § 63-3622R(c)" to [Redacted], contending that the word "fleet" as used in the statute does not indicate that it is limited to a single fleet as defined in the IRP. The taxpayer believes that the Commission's "artificial separation of the entire fleet of trucks" operated by the company for the purposes of the IRP "has no impact on the status of the trucks that are eligible for [the sales and use tax] exemption." "Fleet," the taxpayer stresses, should be defined as it is commonly understood in the industry, i.e. to mean **all** operating vehicles. Viewed thus, when the taxpayer's "entire fleet" mileage is considered, presumably all of the taxpayer's vehicles meet the requirement for an exemption because the 10 percent out-of-state mileage threshold on the aggregate has been met.

Analysis

As noted previously, Idaho Code § 63-3622R(c) refers to an exemption from sales and use tax when "the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of [Redacted] in any annual registration period under the international registration plan."

The taxpayer argues that the word "fleet" as used in the exemption statute is not intended to be restricted to each fleet for the purpose of determining the exemption. While the taxpayer does not specifically provide what it considers a more suitable definition of the word fleet, it suggests that the word is commonly understood in the industry to refer in the aggregate to all trucks owned by the taxpayer.

If the taxpayer believed that for the clarity of the statute it needed to look elsewhere for a definition, it might use the Idaho motor vehicle statute, but that source is more helpful to the Commission's position, as these excerpts reveal:

> "Fleet" means one (1) or more apportionable vehicles (Idaho Code § 49-107(9) Definitions -- F).
>
> PROPORTIONAL REGISTRATION OF COMMERCIAL VEHICLES. (1) *Any owner engaged in operating one (1) or more fleets of commercial vehicles* may, in lieu of the registration fees imposed by section 49-434, Idaho Code, register each fleet for operation in this state by filing an application with the department which shall contain the information required by the international registration plan (IRP) agreement (Idaho Code § 49-435, emphasis added).

Note that the motor vehicle statute refers to "fleet" in the context of apportionable vehicle registration fees and that it contemplates single ownership of multiple fleets.

The taxpayer argues that it is arbitrary for the Commission to restrict itself to the definition of "fleet" as it is used in the sales tax statute that provides the tax exemption it wishes to take. Alternatively, the Commission believes it is reasonable to find meaning within the statute that provides the exemption the taxpayer seeks. It does so for the following reasons.

The Commission believes that aggregating all fleets (and mileage) into one fleet for the purpose of determining applicability of the exemption may dilute the tax statute's requirement that the vehicles in question be "substantially used in interstate commerce" in order to qualify for an exemption. The taxpayer's objection to the audit results and promotion of an alternative interpretation thwarts the intent of the statute. From the Commission's perspective, the legislature sets a readily achievable threshold by allowing that any single vehicle in a qualifying fleet need not travel substantially outside of [Redacted] borders. One vehicle from a small fleet could conceivably spend some of its operating life outside the borders and contribute enough mileage to enable the fleet

as a whole to qualify.

Further, if the division of the vehicles into IRP-designated fleets for the purpose of determining the "substantial use" requirement was not necessary to establish an exemption, the legislature could have enacted a simpler statute, dispensing with IRP registration and defining "fleet" as all large commercial vehicles with any trip outside Idaho in a specific time period. Against that backdrop, it would require a taxpayer to record and aggregate mileage for the purpose of applying the "substantial use" test.

The taxpayer's interpretation impermissibly extends legislative generosity by aggregating all fleets and mileages, further diluting each vehicle's contribution to the "substantially used in interstate commerce" requirement.

Considering the alternative view of the taxpayer, the Commission relies on the established analysis of courts examining exemption statutes. Tax exemptions existing only by legislative grace are to be strictly construed against the party claiming the exemption. (Kwik Vend Inc. v. Koontz, 94 Idaho 166, 483 P.2d 928 (1971); Upper Columbia Mission Society v. Kootenai County, 93 Idaho 880, 477 P.2d 503 (1970)).

Since the taxpayer seeks an exemption from tax on the use of tangible personal property in Idaho, there is a considerable burden in proving the Commission's interpretation is incorrect. In the decision of the Idaho State Tax Commission v. Stang, the Idaho Supreme Court stated:

> If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. (Potlatch Corp. v. Idaho State Tax Comm'n, 128 Idaho 387, 913 P.2d 1157 (1996)) . This Court has no authority to rewrite the tax code. (Bogner v. State Dep't of Revenue and Taxation, 107 Idaho 854, 693 P.2d 1056 (1984)). Any exemption from taxation must be created or conferred in clear and plain language and cannot be made out by inference or implication. (Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964)). This Court does not have the authority to create deductions, exemptions, or tax credits. If the provisions of the tax code are

> socially or economically unsound, the power to correct it is legislative, not judicial. (Idaho State Tax Commission v. Stang, 135 Idaho 800, 25 P.3d 113 (2001)).

The Commission is an administrative agency of the state, charged with enforcing tax laws. As such, it must at times interpret statutes when taxpayers have a conflicting view. It attempts to do so--much as a court would. When interpreting a statute, the court begins with an examination of the literal words of the statute. (Grand Canyon Dories v. Idaho State Tax Comm'n, 124 Idaho 1, 5, 855 P.2d 462, 466 (1993); State ex rel. Lisby v. Lisby, 126 Idaho 776, 779, 890 P.2d 727, 730 (1995)). The language of the statute is to be given its plain, obvious, and rational meaning. (Lisby, 126 Idaho at 779, 890 P.2d at 730).

The Commission finds its application of the relevant code section to be reasonable, unstrained, and useful in reaching conclusions it believes were envisioned by the legislature. It would only seek a competing definition of the word "fleet" if an ambiguity existed within a statute containing an obviously unsatisfactory explanation of the word in question. The Commission sees no such ambiguity. The term is well inferred from the sales tax exemption statute, and the meaning is not contradicted by Idaho's motor vehicle statute or elsewhere in the state's statutes.

Again, taking a role much as a court would, if statutory language is clear and unambiguous, the court need merely apply the statute without engaging in any statutory construction. (State v. Hagerman Water Right Owners, Inc., 130 Idaho 727, 732, 947 P.2d 400, 405 (1997)).

Additionally, a court would determine if an absurdity is reached by relying upon the definition of "fleet" to mean discrete groupings of vehicles registered under the IRP for coverage of unique geographical areas and, by extension, to determine the tax exemption by examining each fleet separately. Unless the result is palpably absurd, "… [a] Court assumes that the legislature meant what is clearly stated in the statute" (Miller v. State, 110 Idaho 298, 299, 715 P.2d 968, 969

(1986)). Only where the language is ambiguous will "… [a]…Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations" (Payette River Property Owners Ass'n v. Board of Com'rs of Valley County, 132 Idaho at 557, 976 P.2d at 483 (1999)).

Speaking to resolutions rather than to statutes, one court remarked, "A resolution is ambiguous if reasonable minds might differ or be uncertain as to its meaning; however, ambiguity is not established 'merely because an astute mind can devise more than one interpretation of it'" (Matter of Permit No. 36-7200, 121 Idaho at 823, 828 P.2d at 852. See also, Payette River Property Owners Ass'n v. Board of Com'rs of Valley County, supra.).

In sum, the Commission is not persuaded by the request to assemble all of the taxpayer's vehicles into one all-inclusive fleet for the purpose of applying the IRP exemption test.

The taxpayer argued separately in its protest, and irrespective of its central argument regarding the definition of fleet, that three of the 14 vehicles in Fleet 002 were not within the three-year statute of limitations for tax purposes. For a taxpayer that files sales and use tax returns regularly, the Commission must assess taxes within three years of the due date of the return or the date the return was filed, whichever is later (Idaho Code § 63-3633(a)).

The taxpayer believed that an investigation of the history of three particular vehicles would show that before the first day of the audit period (March 1, 2004) they were in IRP fleets that did not comply with the "substantially used in interstate commerce" requirement (i.e. the aggregate mileage of the fleet outside of [Redacted] in a registration year ending prior to March 1, 2004, was not at least 10 percent).

The Commission agreed to examine Idaho Transportation Department records to confirm or disprove the taxpayer's assumptions. The record review revealed that in 2001 two of the three vehicles became part of a fleet that did not qualify for the IRP exemption. Since tax was first due in

a registration year that predates the audit period, the tax is uncollectible by statute; and this Decision includes a tax, interest, and penalty adjustment in favor of the taxpayer.

The circumstances surrounding the third vehicle were a matter of continuing dispute because the use of the vehicle was first taxable in the time period covered by a statute waiver signed by the taxpayer. However, the Commission now realizes that the point in time when the tax was first due predates the beginning of the audit period, which differs from the statute waiver date. Therefore, the Commission agrees that it cannot assess tax. The Commission has adjusted the tax, interest, and penalty amount accordingly.

The Bureau added interest and penalty to the use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and updated interest accordingly.

WHEREFORE, the Notice of Deficiency Determination dated May 3, 2006, is hereby MODIFIED, and as so modified is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner receive the following refund:

TAX	PENALTY	INTEREST	TOTAL
$4,959	$248	$727	$ 5,934
		Less Payment	(5,938)
		REFUND due taxpayer	$ (4)

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[REDACTED]
[Redacted]
[Redacted]

Receipt No.

_____